

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NUMBER:

IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION

19-md-02875-RBK

STATUS CONFERENCE
VIA REMOTE ZOOM
VIDEOCONFERENCE

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
Thursday, January 19, 2023
Commencing at 4:03 p.m.

B E F O R E:

THE HONORABLE THOMAS I. VANASKIE,
(RET.), SPECIAL MASTER

A P P E A R A N C E S:

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Proceedings recorded by stenographically;
transcript produced by computer-aided transcription.

A P P E A R A N C E S : - (Continued) :

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ALSO PRESENT:

LORETTA SMITH, ESQUIRE
Judicial Law Clerk to The Honorable Robert B. Kugler

Larry MacStravic, Courtroom Deputy

1 (PROCEEDINGS held via remote Zoom videoconference
2 before **The Honorable THOMAS I. VANASKIE**, (Ret.), Special
3 Master, at 4:03 p.m.)

4 THE COURT: Are we ready to proceed? Are we waiting
5 for anybody? I guess I should ask the question.

6 MR. SLATER: I don't know.

7 MS. ROSE: We can just proceed on behalf of the
8 defendants, Your Honor.

9 THE COURT: All right, very well. We will proceed
10 then.

11 MR. SLATER: We're good on the plaintiffs' side,
12 Judge.

13 THE COURT: Okay. With respect to the agenda
14 letters that have been submitted -- you know all the drill.
15 Identify yourself when speaking.

16 We have Mary Jo as our court reporter here today.
17 Your names do appear on the screen, but it might be hard for
18 her to see, so identify yourselves for her. Only one person
19 speaks at a time. And mute your phones or your speakers if
20 you're not going to talk. All right.

21 So we'll go through this very sparse agenda letter
22 and address, first, the deadlines in CMO-29 and CMO-30. Case
23 Management Order 29 and Case Management Order 30.

24 Now, you've submitted with your letters --
25 specifically, the defense have submitted with their letter a

1 chart with proposed new deadlines. Those new deadlines are
2 acceptable, but what we ask is that you submit to us a
3 complete stand-alone proposed order that we can issue so that
4 it's clear on the docket what has happened, rather than issue
5 something saying the deadlines are extended one week or two
6 weeks or whatever it is.

7 So it doesn't matter to us which side takes the
8 laboring war on that. Just submit to us the proposed order
9 and we'll get it docketed. But I don't think there's anything
10 for us to discuss. I don't think there were any objections on
11 that. Am I right?

12 MR. SLATER: You're correct, Your Honor, thank you.
13 I'm sure between us and the defense, we can get an order
14 agreed to.

15 THE COURT: Okay, good.

16 And the same thing with respect to the PFS, the
17 Plaintiff Fact Sheets. That order will be issued. You did
18 submit to us a complete order on that. We'll just strike the
19 word "proposed" and have it issued. No problem there.

20 Now, I wanted to talk to you little bit about the
21 pending motion with respect to discovery from Valisure, if I'm
22 pronouncing that correctly.

23 Is the briefing complete on that now?

24 MS. HILTON: Your Honor, this is Layne Hilton for the
25 plaintiff. I apologize for not being on camera. My camera is

1 not working.

2 But I believe that, from our perspective, the
3 briefing is complete, although I don't see any of my
4 colleagues from Skadden who we've been negotiating with on
5 this on the call, so I don't want to speak out of turn.

6 But from our perspective, they filed their motion to
7 compel and we filed our response, which included a
8 cross-motion for protective order.

9 So I think that was sort of what we contemplated
10 occurring as the briefing, but I don't want to put words in
11 the mouths of the defendants.

12 THE COURT: Yes. And I didn't realize we didn't have
13 anybody on from the Skadden firm.

14 MS. ROSE: We do -- I'm sorry -- hi. This is Nina
15 Rose for the DHP defendants. I'm not the usual participant.
16 The usual participant, Jessica Miller, is on a plane today, so
17 I'm taking her place.

18 We had anticipated -- because plaintiffs' response
19 included a cross-motion which they then filed as a
20 cross-motion -- that we would file a very brief opposition to
21 that cross-motion, and we should be able to have that in in a
22 few days -- or we don't think we'll need much time for that.

23 THE COURT: All right, that's fine.

24 What exactly is the dispute on this motion? I
25 thought you were simply looking for some identification

1 numbers.

2 Am I wrong on that, Nina?

3 MS. ROSE: You are not wrong. And I'm sorry -- let
4 me try to get my camera working.

5 Is it on?

6 THE COURT: Yes.

7 MS. ROSE: Okay, there you go. All right, thank you.

8 Yes -- no, you were right. The only thing that is at
9 issue are the NDC codes, which are just the identifying
10 numbers for the samples of Novartis Valsartan product that
11 were tested by Valisure in connection with its 2019 citizen's
12 petition.

13 We're not looking for anymore document discovery. A
14 letter would do just setting forth here the NDC codes for the
15 Novartis products that were tested.

16 MS. HILTON: Your Honor, just to make sure that
17 plaintiffs' position on this is clear, I know that the
18 defendants classify this as very limited discovery of
19 Valisure, but, as we set forth in our papers, we think that
20 this discovery is primarily, one, that they've had knowledge
21 of this citizen's petition since 2019. We believe that this
22 discovery is extraordinary untimely; there was a time and
23 place to enter these third-party subpoenas; and we believe
24 that we would suffer grave prejudice, if any -- this is a sort
25 of slippery slope. And while they say it is all very limited,

1 I think even opening door a crack or a tinge into third-party
2 discovery that they, you know, that is going to be
3 inappropriately used to make some sort of Daubert argument, we
4 just, as we set forth in our paper -- in our papers, we just
5 do not believe that we should even be going down this road.

6 THE COURT: All right.

7 MS. ROSE: Your Honor?

8 THE COURT: Go ahead.

9 MS. ROSE: Sorry, I didn't mean to cut you off. If I
10 could reply.

11 I think that there's no concern about a slippery
12 slope. This is extremely limited.

13 And the NDC -- this issue of the Valisure-tested
14 Novartis samples, this has been something we've been
15 discussing.

16 There was a motion to compel one of plaintiffs'
17 experts to produce materials about it over the summer that was
18 entered. That happened, but the discovery that was produced
19 by the plaintiffs' expert couldn't identify the samples.

20 And in connection with that motion, plaintiffs raise
21 for the first time this idea that the Valsartan samples that
22 were tested were not the name brand drug, which had been sort
23 of assumed by defendants. And then since, in October,
24 plaintiffs' experts, a number of them have filed new expert
25 reports that have indicated that they're taking this position

1 that NDMA had never been found in the name brand drugs, which
2 would be disputed if we get the NDC codes.

3 So all of this, this isn't something that's been
4 around forever. This is something that has arisen as a result
5 of plaintiffs' experts submitting reports in October.

6 Again, very limited discovery. I don't think this --
7 it doesn't enter anything new into the case. This is
8 something that the parties have long been discussing. It's
9 just confirming what defendants thought was confirmed long ago
10 but plaintiffs took issue with recently.

11 THE COURT: All right.

12 Well, you're going to file a reply brief, so we'll
13 take a look at the reply brief and issue a decision on it.

14 I will say that I am concerned about this discovery
15 being undertaken at this time, well after discovery -- fact
16 discovery was to have been closed, and so I think that's a
17 serious concern. All right?

18 MS. ROSE: I appreciate it, Your Honor, and
19 appreciate you reviewing our opposition to the cross-motion.

20 Thank you very much.

21 MS. HILTON: Yes, thank you, Your Honor.

22 THE COURT: Sure thing, Ms. Hilton.

23 We have the TPP motion to compel briefing completed.
24 You've argued it, you're waiting on a decision from me. I'll
25 try to get to that promptly.

1 Anything else on that?

2 MR. OSTFELD: No, your Honor.

3 MR. RIVERO: No, Your Honor, it was fully argued.

4 THE COURT: Yes. All right. Well, thank you all
5 very much. I don't have anything else. If you don't have
6 anything else, we'll adjourn.

7 MR. SLATER: Nothing else for plaintiffs.

8 THE COURT: All right.

9 MS. HILTON: Nothing else from defendants. Thank
10 you, Judge.

11 THE COURT: Thank you very much.

12 (Proceedings concluded at 4:12 p.m.)

13 - - -

14

15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter.

17

18 /S/ Mary Jo Monteleone, RMR, CCR, CRCR
19 Official Court Reporter

January 20, 2023
Date

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